IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4360 OF 2006

Dr.Shirnivas Bapuso Patil & Anr. ..Petitioners.

V/s.

Karamveer Bhaurao Patil Zilla Sahakari Pat Sanstha Ltd. & Ors. ..Respondents.

Mr.S.S.Patwardan for petitioners.

Mr.T.S.Ingale for respondent Nos.1 & 2.

Ms.V.Mhaispurkar, A.G.P. for respondent Nos.3 & 4.

CORAM : ABHAY S.OKA, J.

DATED : 13th APRIL, 2007.

P.C. :-

Submissions of the learned counsel for the parties were heard on the last date. On the application made by the first respondent, a recovery certificate was issued against the petitioner Under section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as said Act). A Revision application was filed by the petitioner challenging the order issuing the recovery certificate. The Revision application has been dismissed by order dated 16th July, 2006.

2. By this Writ Petition under Article 227 of the Constitution of India, the petitioners have challenged the said order passed by the Revisional

authority.

3. Shri Patwardan appearing for the petitioners has made various submissions. His first submission is that there was a settlement between the petitioners and the first respondent by accepting certain amounts and in fact after the settlement, the first respondent agreed to release the vehicle from hypothetication. He pointed out that the recovery certificate has been issued for recovery of loan amount which was taken for purchasing the said vehicle. He has invited my attention to the various documents which were on record of the Revisional authority and has submitted that said documents are at all not considered by the revisional authority. He has submitted that if the said documents were considered, it will be established that there were no dues payable by the petitioners.

4. Without prejudice to the rights and contentions of the petitioners, the learned Advocate for the petitioners on instructions from the petitioners stated that the petitioners are ready and willing to deposit a sum of Rs.7 lakhs with the Revisional Authority on or before 31st July, 2007. He submits that if the said amount is deposited, the order of remand may be passed and the Revisional Authority

may be directed to decide the revision application afresh. Mr.Ingale appearing for the first respondent submits that there is no merit in the revision application and in fact that there was no settlement between the parties. He submits that in the affidavit filed on behalf of the first respondent, all the contentions which were raised by the Revision Applicant have been dealt with. He, therefore, submits that no interference was called for.

5. I have considered the submissions. My attention has been invited to the various documents including the documents at Exhibit G and C. My attention is also invited to the statement of accounts. On the basis of the said documents, it is the contention of the petitioner that there was a settlement and certain amount was accepted by the first respondent in the full and final settlement of the claim. The documents which are relied upon by the petitioners, prima facie, show that the consent was granted by the first respondent for deleting the entry of hypothetication from the record of the R.T.O. There is some substance in the submission of the learned Advocate for the petitioners that the said documents are not considered by the Authority. The petitioners have offered to deposit a sum of Rs.7 lakhs with the

Revisional authority. The petitioners have already deposited 50% of the amount due under the Recovery Certificate. Therefore, the first respondent will be adequately protected even if the Revisional Authority is directed to consider various documents which have been produced by the petitioners. The Revisional Authority will rehear the Revision Application only after the deposit of the amount within the time stipulated. In my view, in the interest of justice, an opportunity deserves to be granted to the petitioners to satisfy the authority dealing with revision about the existence of alleged settlement provided compliance is made by depositing a sum of Rs.7 lakhs. Hence I pass the following order.

i. The impugned Judgment and Order dated 13th June, 2006 is quashed and set aside subject to the petitioners depositing with the Divisional Joint Registrar of Co-operative Societies, Kolhapur a sum of Rs.7 lakhs (Rs.7,00,000/- only) on or before 31st July, 2007.

ii. If the amount is not deposited within the stipulated time, the impugned order will stand revived and it will be open for the first respondent to recover the amount on the basis of the recovery certificate

which is already issued.

iii. The deposit of the aforesaid amount by the petitioners will be without prejudice to the rights and contentions of both the parties.

iv. If the amount is deposited within the stipulated time, the Divisional Joint Registrar will hear and decide the Revision Application afresh in the light of the observations made in this Judgment within a period of two months from 1st August, 2007.

v. Till the time the Revision Application is not decided, no coercive action will be taken against the petitioners on the basis of the recovery certificate which is the subject matter of the Revision Application.

vi. An Order regarding the disbursement of the said amount of Rs.7 lakhs shall be passed by the Revisional Authority at the time of final disposal of the Revision Application. In the meanwhile, the amount shall be invested in fixed deposit in any nationalised Bank.

vii. All contentions of the parties on merits of the Revision Application are expressly kept open.

viii. Writ Petition is partly allowed in above terms with no order as to costs.

ix. It is made clear that the observations which

are made in this order are only tentative observations.

(ABHAY S. OKA, J.)